

REMARKS

I. Status of the Application

Claims 1 and 3-25 are pending in the above-referenced patent application. In the Office Action, the Examiner determined that more than the Application contained claims directed to two species of the claimed invention and required that the Applicants elect between the following species:

Species I. Claims 1 and 3-23, drawn to a microphone system comprising a first microphone element; a second microphone element positioned near the first microphone element to provide an audio signal (see Fig. 1);

Species II. Claim 24-25, drawn to a microphone system for telecommunications having a first microphone element having a first output to a fourth microphone element having a fourth output (see Fig. 6).

The Examiner set forth a thirty-one day shortened statutory period of responding. This paper is being filed with such period of time.

II. Provisional Election.

The Applicants provisionally elect Claims 1 and 3-23 of Species I and respectfully traverses the Restriction Requirement.

III. The Species Election Requirement Should Be Withdrawn.

Applicants respectfully traverse the Examiner's species election requirement because the Species I and Species II are not "independent and distinct", and regardless of whether the Species

are independent and distinct, the application contains allowable generic claims, and a serious burden would not be placed on the Examiner if restriction is not required. To establish a proper restriction requirement, the Examiner must show that the inventions are independent or distinct as claimed and that a serious burden would be placed on the Examiner if restriction is not required. 37 C.F.R. § 1.141(a); MPEP §§ 803(I) & 808.

A. No Serious Burden Exists.

Applicants respectfully submit that the restriction is improper and should be withdrawn because a serious burden would not be placed on Examiner if restriction is not required. "If the search and examination of all claims in an application can be made without serious burden, the examiner **must** examine them on the merits, even though they include claims to independent or distinct inventions." MPEP § 803 (emphasis added). Here, all the claims are directed towards microphone systems for communication devices and the use thereof for creating a null that reduces acoustic coupling in the communication device. All the claims would fall within the same classification system and fields of search. The Examiner does not allege any differently in the Restriction Requirement because the Examiner does not list different classes or subclasses that may need to be consulted for the different groups. Due to the relatedness of the claimed subject matter in claims 1 and 3-25, search and examination can be made without a serious burden on the Examiner. Accordingly, Applicants respectfully submit that the this Restriction Requirement is improper and should be withdrawn because examination can be made without a serious burden to the Examiner, which requires the Examiner to examine all the claims on their merits.

B. Claims 1 and 13 Are Generic Claims.

Applicants respectfully submit that the Restriction Requirement is improper and should be withdrawn, because claims 1 and 13 are generic claims that cover both Species II, as well as its own Species I. A Restriction Requirement is improper when an allowable generic claim that covers the alleged Species is in the Application. 37 C.F.R. §1.146; MPEP §804. A generic claim is one that reads upon all the species, requires no material element in addition to all the species, and each of the species claims require all the elements of the generic claim. Claims 1 and 13 obviously reads upon Species I, requires no material element in addition to Species I and the claims of Species I require all the elements of claims 1 and 13, because all the claims in Species I depend from claims 1 and 13 respectfully. Similarly, claims 1 and 13 read upon Species II because nothing in claims 1 and 13 limit the scope of the claims to just a first and second microphone element or to just one signal flow process. Claims 1 and 13 also do not require any material elements in addition to Species II and claim 24 of Species II contains all the limitations of claim 1 and 13. Accordingly, Applicants respectfully submit that the Restriction Requirement is improper and should be withdrawn, because claims 1 and 13 are generic and cover both species.

C. Species I and II are not Patentably Distinguishable.

Applicants respectfully submit that Species I and II are not patentably distinguishable over one another. A determination that an election of a species is necessary must be based on a conclusion that the species are patentably distinct from one another. MPEP §806.04. Here Species I and II are clearly related (i.e., not independent of one other) and not distinct because as explained above, claims 1 and 13 overlap in scope with claim 24. MPEP §806.04(f). The

Examiner determined that Species I is characterized by a microphone system comprising two microphone elements, while Species II is characterized by four microphone elements. Applicants respectfully submit that a change in the number of microphone elements does not render Species I and II patentably distinguishable from each other. Accordingly, Applicants respectfully submit that the Restriction Requirement should be withdrawn.

IV. Claim 25.

It is noted that the Examiner did not place claim 25 in either Species and thus, Applicants have no requirement to respond to for claim 25 in this paper. However, Applicants respectfully submit that if claim 25 was meant to be included in Species II, such a Restriction Requirement is improper if for no other reason that the search and examination of claim 25 does not create a serious burden on the Examiner.

CONCLUSION

For the reasons set forth above, allowance of this Application is respectfully requested. Applicants believe no fees are due at this time. In the event Applicants have inadvertently overlooked the need for payment of any fees, Applicants conditionally petition therefore, and authorize any deficiency to be charged to deposit account 09-0007. When doing so, please reference the above-listed docket number. If there are any other further objections or rejections, the Examiner is invited to contact the undersigned to discuss the Application.

Respectfully submitted,

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